

RESOLUTION #R-10-2014

**A RESOLUTION OF THE LOVELAND CITY COUNCIL APPROVING
THE SIXTH AMENDMENT TO THE CENTERRA MASTER FINANCING AND
INTERGOVERNMENTAL AGREEMENT**

WHEREAS, on January 20, 2004, the City of Loveland (the “City”) and the Loveland Urban Renewal Authority (“LURA”) entered into that certain Centerra Master Financing and Intergovernmental Agreement (the “MFA”), dated January 20, 2004, with Centerra Properties West, LLC (“CPW”), Centerra Metropolitan District No. 1 (the “Service District”), Centerra Public Improvement Collection Corporation (the “PIC”), and Centerra Public Improvement Development Corporation (the “PID”); and

WHEREAS, the City, LURA, CPW, the Service District, the PIC and the PID shall be hereafter referred to collectively as “the Parties”; and

WHEREAS, the Parties entered into that certain First Amendment to the Centerra Master Financing and Intergovernmental Agreement dated December 5, 2006 (“First Amendment”) to include the Centerra Parkway / Crossroads Extension within the definition of “Regional Improvements” as defined in MFA Section 1.43, which First Amendment was approved by the City Council in Resolution #R-114-2006; and

WHEREAS, the Parties entered into that certain Second Amendment to the Centerra Master Financing and Intergovernmental Agreement dated November 20, 2007 (“Second Amendment”) to address various issues associated with the Mixed Use Village Center Project and to include certain parking improvements within the definition of “Local Improvements” as defined in MFA Section 1.54, which Second Amendment was approved by the City Council in Resolution #R-75-2007; and

WHEREAS, the Parties entered into that certain Third Amendment to the Centerra Master Financing and Intergovernmental Agreement dated October 28, 2008 (“Third Amendment”) to address the addition of certain real property to the URA Project Area, as defined in the MFA, and to set forth the terms and conditions pursuant to which the URA Project Area, as amended, shall benefit from property tax increment revenues generated from within the URA Project Area, which Third Amendment was approved by the City Council in Resolution #R-101-2008; and

WHEREAS, the Parties entered into that certain Fourth Amendment to the Centerra Master Financing and Intergovernmental Agreement dated April 7, 2009 (“Fourth Amendment”) to address the formation of a new metropolitan district located within the URA Project Area, known as Centerra Metropolitan District No. 5, which Fourth Amendment was approved by the City Council in Resolution #R-32-2009; and

WHEREAS, the Parties entered into that certain Fifth Amendment to the Centerra Master Financing and Intergovernmental Agreement dated November 5, 2013 (“Fifth Amendment”) to expand the list of Regional Improvements to include Boyd Lake Avenue from

U.S. 34 north to Kendall Parkway (37th Street), and Kendall Parkway from Boyd Lake Avenue on the northwest to US 34 on the southeast, including an underpass at Kendall Parkway and I-25, which Fifth Amendment was approved by the City Council in Resolution #R-96-2013; and

WHEREAS, MFA Section 17.1 provides that the Parties may amend the MFA by an instrument signed by all of the Parties; and

WHEREAS, the MFA permits the funding and construction by the Service District of certain improvements identified as Local Improvements in MFA Section 1.54, and further provides that Local Improvements may also include other public improvements approved by City Council; and

WHEREAS, CPW is planning a significant multi-user retail development on Lot 2, Block 2, Millennium East First Subdivision, recorded in the Larimer County Clerk and Recorder's Office on August 13, 2004, at Reception No. 20040080052 ("Parcel 505"), located within the Commercial District; and

WHEREAS, the retail development on Parcel 505 is expected to generate significant sales tax revenues for the City, and will create many new jobs within the City; and

WHEREAS, the Service District desires to construct the public parking facilities to serve the retail development on Parcel 505; and

WHEREAS, the Service District intends to own, operate and maintain the public parking improvements on Parcel 505 for the benefit of the general public; and

WHEREAS, the Parties desire to amend the MFA to designate the public parking improvements on Parcel 505 as Local Improvements, as permitted by MFA Section 1.54; and

WHEREAS, in connection with the annexation and development of an approximately 106.8 acre parcel, located within Centerra and owned by Poudre Valley Health Care, Inc., the City, acting by and through its Water Activity Enterprise, has constructed a waterline (the "Boyd Lake Waterline") which provides or will provide water service to property located both within and without Centerra; and

WHEREAS, the Boyd Lake Waterline is located, in part, within the right of way for Boyd Lake Avenue and, in part, within the proposed right of way for Kendall Parkway; and

WHEREAS, new development in the area immediately adjacent to Boyd Lake Avenue will trigger a required reimbursement payment to the City for a portion of the costs of constructing the Boyd Lake Waterline; and

WHEREAS, the Boyd Lake Waterline is a PVH Improvement, as that term is defined in the MFA; and

WHEREAS, the MFA does not permit LURA or the Service District to pay the costs of constructing the PVH Improvements, including the Boyd Lake Waterline, if those improvements are constructed by another Governmental Authority (as defined in the MFA); and

WHEREAS, the Service District has asked the City and LURA to consider an amendment to the MFA, to permit the Service District to pay the Boyd Lake Waterline reimbursement to the City, given the designation of Boyd Lake Avenue as a Regional Improvement, and the regional benefit provided to Centerra by the Boyd Lake Waterline; and

WHEREAS, the Parties have negotiated the “Sixth Amendment to the Centerra Master Financing and Intergovernmental Agreement” attached hereto as Exhibit “A” and incorporated herein by reference (the “Sixth Amendment”); and

WHEREAS, after reviewing the Sixth Amendment, and receiving information from City staff and others, the City Council has determined that the Sixth Amendment will be in the best interests of the City and its citizens.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND:


Section 1. That the City Council hereby finds that the Sixth Amendment is in the best interests of the public and will serve the public purposes of (1) providing social and economic benefits to the City; (2) furthering the City’s economic goals as established in the City’s economic development plan; and (3) generally benefiting the public’s health, safety and welfare.

Section 2. That the Sixth Amendment is hereby approved and the Mayor is authorized and directed to execute it on behalf of the City.

Section 3. That the City Manager is authorized, as he deems necessary and in consultation with the City Attorney, to agree to minor amendments to the Sixth Amendment on behalf of the City provided that such amendments are consistent with the purposes of this Resolution and protect the City’s interests.

Section 4. This Resolution shall take effect on the date and at the time of its adoption.

ADOPTED this 4th day of February, 2014.


Cecil A. Gutierrez, Mayor

ATTEST:


City Clerk

APPROVED AS TO FORM:

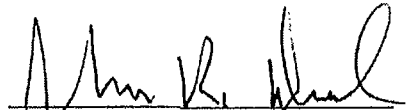

City Attorney

EXHIBIT "A"

**SIXTH AMENDMENT TO THE CENTERRA MASTER FINANCING AND
INTERGOVERNMENTAL AGREEMENT**

**SIXTH AMENDMENT TO THE CENTERRA MASTER FINANCING AND
INTERGOVERNMENTAL AGREEMENT**

THIS SIXTH AMENDMENT TO THE CENTERRA MASTER FINANCING AND INTERGOVERNMENTAL AGREEMENT (the “Sixth Amendment”) is entered into this 4th day of February, 2014, by and among the **CITY OF LOVELAND, COLORADO**, a Colorado home rule municipality (the “City”); the **LOVELAND URBAN RENEWAL AUTHORITY**, a body corporate and politic (“LURA”); **CENTERRA PROPERTIES WEST, LLC**, a Colorado limited liability company (“CPW”); **CENTERRA METROPOLITAN DISTRICT NO. 1**, a quasi-municipal corporation and political subdivision of the State of Colorado (the “Service District”); **CENTERRA PUBLIC IMPROVEMENT COLLECTION CORPORATION**, a Colorado non-profit corporation (the “PIC”); and the **CENTERRA PUBLIC IMPROVEMENT DEVELOPMENT CORPORATION**, a Colorado non-profit corporation (the “PID”).”

WHEREAS, the City, LURA, CPW, the Service District, the PIC and the PID shall be hereinafter referred to collectively as the “Parties”; and

WHEREAS, the Parties have entered into that certain Centerra Master Financing and Intergovernmental Agreement dated January 20, 2004, (together with the First, Second, Third, Fourth, and Fifth Amendments described below, referred to herein collectively as “the MFA”) to provide, among other things, for the financing of “Public Improvements” and “Regional Improvements” related to the development of Centerra, as these terms in quotes are defined in the MFA; and

WHEREAS, the Parties entered into that certain First Amendment to the Centerra Master Financing and Intergovernmental Agreement dated December 5, 2006; and

WHEREAS, the Parties entered into that certain Second Amendment to the Centerra Master Financing and Intergovernmental Agreement dated November 20, 2007; and

WHEREAS, the Parties entered into that certain Third Amendment to the Centerra Master Financing and Intergovernmental Agreement dated October 28, 2008; and

WHEREAS, the Parties entered into that certain Fourth Amendment to the Centerra Master Financing and Intergovernmental Agreement dated April 7, 2009; and

WHEREAS, the Parties entered into that certain Fifth Amendment to the Centerra Master Financing and Intergovernmental Agreement dated November 5, 2013; and

WHEREAS, capitalized terms not otherwise defined herein shall have the meaning given them in the MFA; and

WHEREAS, the MFA permits the funding and construction by the Service District of certain improvements identified as Local Improvements in MFA Section 1.54, and further

provides that Local Improvements may also include other public improvements approved by City Council; and

WHEREAS, CPW is planning a significant multi-user retail development on Lot 2, Block 2, Millennium East First Subdivision, recorded in the Larimer County Clerk and Recorder's Office on August 13, 2004, at Reception No. 20040080052 ("Parcel 505"), located within the Commercial District; and

WHEREAS, Parcel 505 is more particularly depicted in **Exhibit A** to this Sixth Amendment; and

WHEREAS, the retail development on Parcel 505 is expected to generate significant sales tax revenues for the City, and will create many new jobs within the City; and

WHEREAS, the Service District desires to construct the public parking facilities to serve the retail development on Parcel 505; and

WHEREAS, the Service District intends to own, operate and maintain the public parking improvements on Parcel 505 for the benefit of the general public; and

WHEREAS, the Parties desire to amend the MFA to designate the public parking improvements on Parcel 505 as Local Improvements, as permitted by MFA Section 1.54; and

WHEREAS, in connection with the annexation and development of an approximately 106.8 acre parcel, located within Centerra and owned by Poudre Valley Health Care, Inc., the City, acting by and through its Water Activity Enterprise, has constructed a waterline (as more particularly defined below, the "Boyd Lake Waterline") which provides or will provide water service to property located both within and without Centerra; and

WHEREAS, the Boyd Lake Waterline is located, in part within the right of way for Boyd Lake Avenue and in part within the proposed right of way for Kendall Parkway; and

WHEREAS, new development in the area immediately adjacent to Boyd Lake Avenue will trigger a required reimbursement payment to the City for a portion of the costs of constructing the Boyd Lake Waterline; and

WHEREAS, the Boyd Lake Waterline is a PVH Improvement, as that term is defined in the MFA; and

WHEREAS, the MFA currently does not permit LURA or the Service District to pay the costs of constructing the PVH Improvements, including the Boyd Lake Waterline, if those improvements are constructed by another Governmental Authority (as defined in the MFA); and

WHEREAS, the Service District has asked the other Parties to consider an amendment to the MFA, to permit the Service District to pay the Boyd Lake Waterline reimbursement to the

City, given the designation of Boyd Lake Avenue as a Regional Improvement, and the regional benefit provided to the City and to Centerra by the Boyd Lake Waterline; and

WHEREAS, the Parties desire to amend the MFA to permit the Service District to pay the costs of constructing the Boyd Lake Waterline, via reimbursements to the City, as new development triggers such reimbursement obligations; and

WHEREAS, MFA Section 17.1 provides that the Parties may amend the MFA by an instrument signed by all of the Parties; and

WHEREAS, the Loveland City Council approved this Agreement in Resolution _____ and also approved it sitting as the LURA's governing body in Resolution _____.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and adequacy of which the Parties acknowledge, the Parties agree as follows:

DEFINITIONS

1. That unless the context clearly indicates otherwise, all capitalized terms used in this Sixth Amendment shall have the meaning given to them in the MFA.

2. That for purposes of this Sixth Amendment, the term "Boyd Lake Waterline" shall mean that certain 24" and 16" waterline originally constructed by the City, acting by and through its Water Utility Enterprise, pursuant to the PVH Agreement and as more particularly depicted on **Exhibit B** to this Sixth Amendment, attached hereto and incorporated herein by reference.

3. That for purposes of this Sixth Amendment, the term "Parcel 505 Parking Improvements" shall mean the public parking facilities to be constructed and owned by the Service District, to serve the retail development on Parcel 505, within the Commercial District, as generally depicted on **Exhibit C** to this Sixth Amendment, attached hereto and incorporated herein by reference.

PARCEL 505 PARKING IMPROVEMENTS

4. That the first sentence of Section 1.54 of the MFA shall be amended to include the Parcel 505 Parking Improvements, but shall remain unchanged in all other respects.

5. That Section 1.80 of the MFA shall be amended to read in full as follows:

1.80 "**Private Parking**" shall mean and refer to any parking improvements required by City Regulations to serve, in whole or in part, a Private Improvement, except the parking improvements for the Lifestyle Center, which are to be owned by the Service District or the Commercial District, which improvements are depicted on **Exhibit E** to the MFA, and the Parcel

505 Parking Improvements, which are to be owned by the Service District or the Commercial District, which are depicted on **Exhibit C** to this Sixth Amendment.

BOYD LAKE WATERLINE

6. That the final paragraph of Section 1.57 of the MFA shall be amended to read in full as follows:

The Metro District Improvements shall include the PVH Improvements, but only to the extent the PVH Improvements, as a result of the termination of the PVH Agreement, are not Constructed by any other Governmental Authority; provided, however, the Boyd Lake Waterline shall be considered a Metro District Improvement notwithstanding the fact that the Boyd Lake Waterline was originally installed by the City.

7. That Section 4.2 of the MFA shall be amended to read in full as follows:

4.2 PVH Improvements. Neither the LURA nor the Service District shall Construct, or pay the cost of constructing, any Public Improvements within Centerra that any other Governmental Authority is obligated to Construct, and/or pay the cost of Constructing, pursuant to the PVH Agreement, so long as the PVH Agreement remains in effect; provided, however, the Service District shall be authorized to make reimbursement payments to the City to reimburse the City for all or a portion of the City's costs in constructing the Boyd Lake Waterline as required by City Regulations.

MISCELLANEOUS

8. That the City, LURA, and the Service District each finds and determines that the execution of this Sixth Amendment is in the best interest of the public health and general welfare of the City, LURA, and the Service District respectively, and that it will serve the public purposes of providing significant social and economic benefits to the City, LURA, and the Service District.

9. That except as expressly provided in this Sixth Amendment, all other terms and conditions of the MFA shall remain unchanged and in full force and effect.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, the Parties have executed this Sixth Amendment or counterpart copies thereof as of the date first written above.

CITY OF LOVELAND, COLORADO, a Colorado
municipal corporation

By: _____
Cecil Gutierrez, Mayor

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

City Attorney

LOVELAND URBAN RENEWAL AUTHORITY,
a Colorado body corporate and politic

By: _____
Cecil Gutierrez, Chairman

ATTEST:

By: _____
_____, Secretary

APPROVED AS TO FORM:

City Attorney

CENTERRA METROPOLITAN DISTRICT NO. 1,
a quasi-municipal corporation and political
subdivision of the State of Colorado

By: _____
Kim L. Perry, President

ATTEST:

By: _____
Tom Hall, Secretary

CENTERRA PUBLIC IMPROVEMENT
COLLECTION CORPORATION, a Colorado non-
profit corporation

By: _____
Jay Hardy, President

ATTEST:

By: _____
Joshua Kane, Secretary/Treasurer

CENTERRA PUBLIC IMPROVEMENT
DEVELOPMENT CORPORATION, a Colorado
non-profit corporation

By: _____
Jay Hardy, President

ATTEST:

By: _____
Joshua Kane, Secretary/Treasurer

CENTERRA PROPERTIES WEST, LLC
a Colorado Limited Liability Corporation

By: McWhinney Real Estate Services, Inc.,
a Colorado Corporation, Manager

By: _____
Douglas L. Hill, Executive Vice President

EXHIBIT A

Parcel 505

MILLENNIUM EAST FIRST SUBDIVISION
BEING A SUBDIVISION OF TRACT A, McWHINNEY ADDITION AND PARCELS B-1, B-2, B-3, B-4 AND C, MILLENNIUM ADDITION, EAST REGION,
LOCATED IN SECTIONS 10 AND 11, TOWNSHIP 5 NORTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN,
CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO.

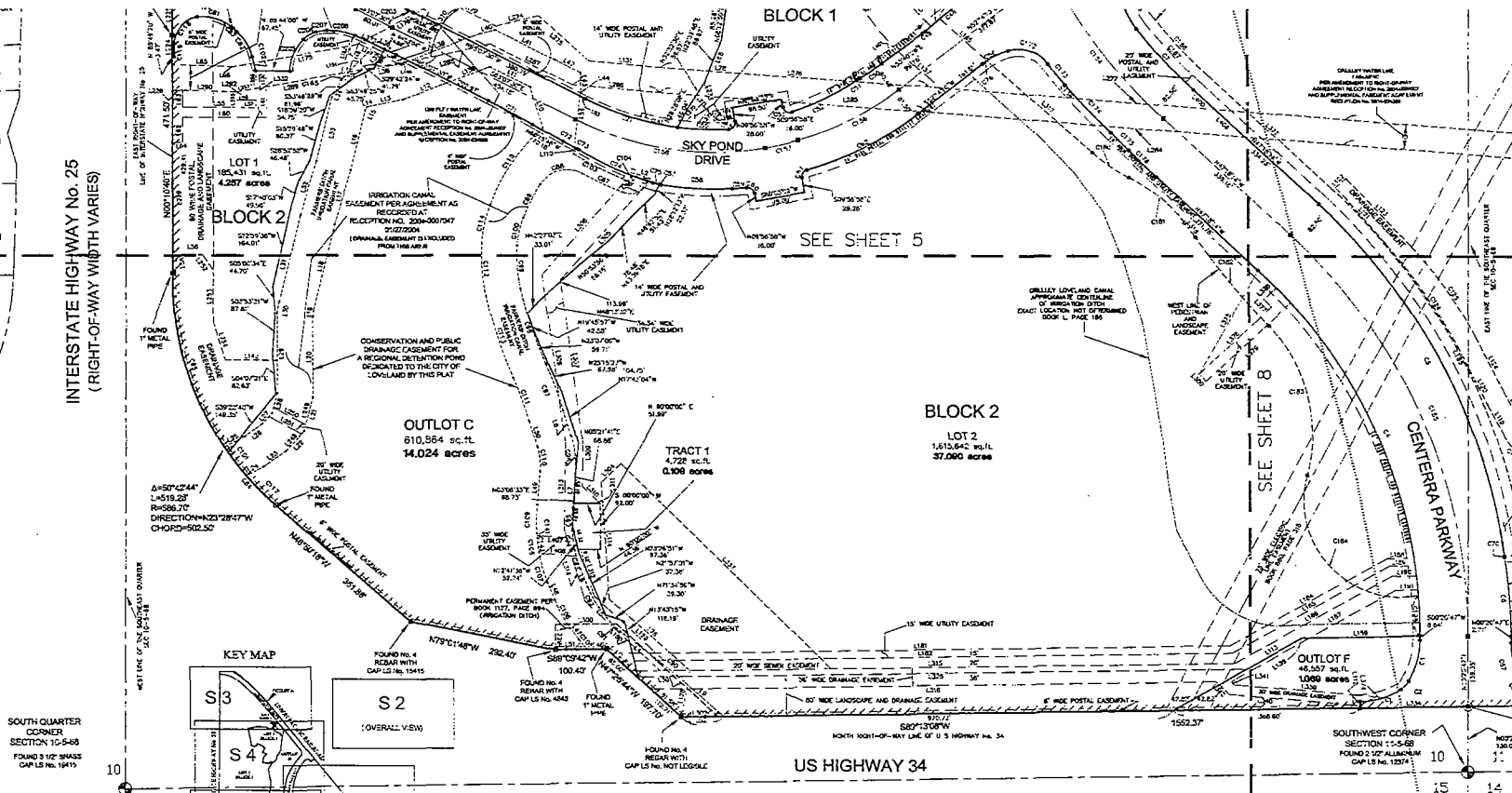
DRAWING NUMBER
60F8

DRAWING NUMBER
4728

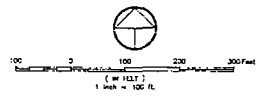
DRAWING NUMBER
60F8

DRAWING NUMBER
4728

INTERSTATE HIGHWAY No. 25
(RIGHT-OF-WAY WIDTH VARIES)



SOUTH QUARTER CORNER SECTION 10-5-88 FOUND 3 1/2" BRASS CAP LS NO. 1415



1" = 111.7'
1" = 106.3'

MONUMENT LEGEND

- FOUND MONUMENT LOCATED AS NOTED
- SETTING 4 REBAR WITH CAP LS NO. 1443
- NO. 1 REBAR WITH CAP LS NO. 1442 TO BE SET UPON COMPLETION OF STRUT CONSTRUCTION
- FOUND PROPERTY CORNER AS NOTED

NOTICE:
This drawing is prepared by the engineer on the basis of the information furnished to him by the owner. It is the responsibility of the owner to see that the information is correct and complete. The engineer assumes no responsibility for the accuracy of the information furnished to him by the owner. The engineer's liability is limited to the professional services rendered by him.

SECTION 10-5-88
TOWNSHIP 5 N
RANGE 68 W
PAGE 15 OF 17

NORTHERN ENGINEERING, INC.
1000 14th Street, Suite 100
Loveland, CO 80538
Phone: (970) 441-1111
Fax: (970) 441-1112

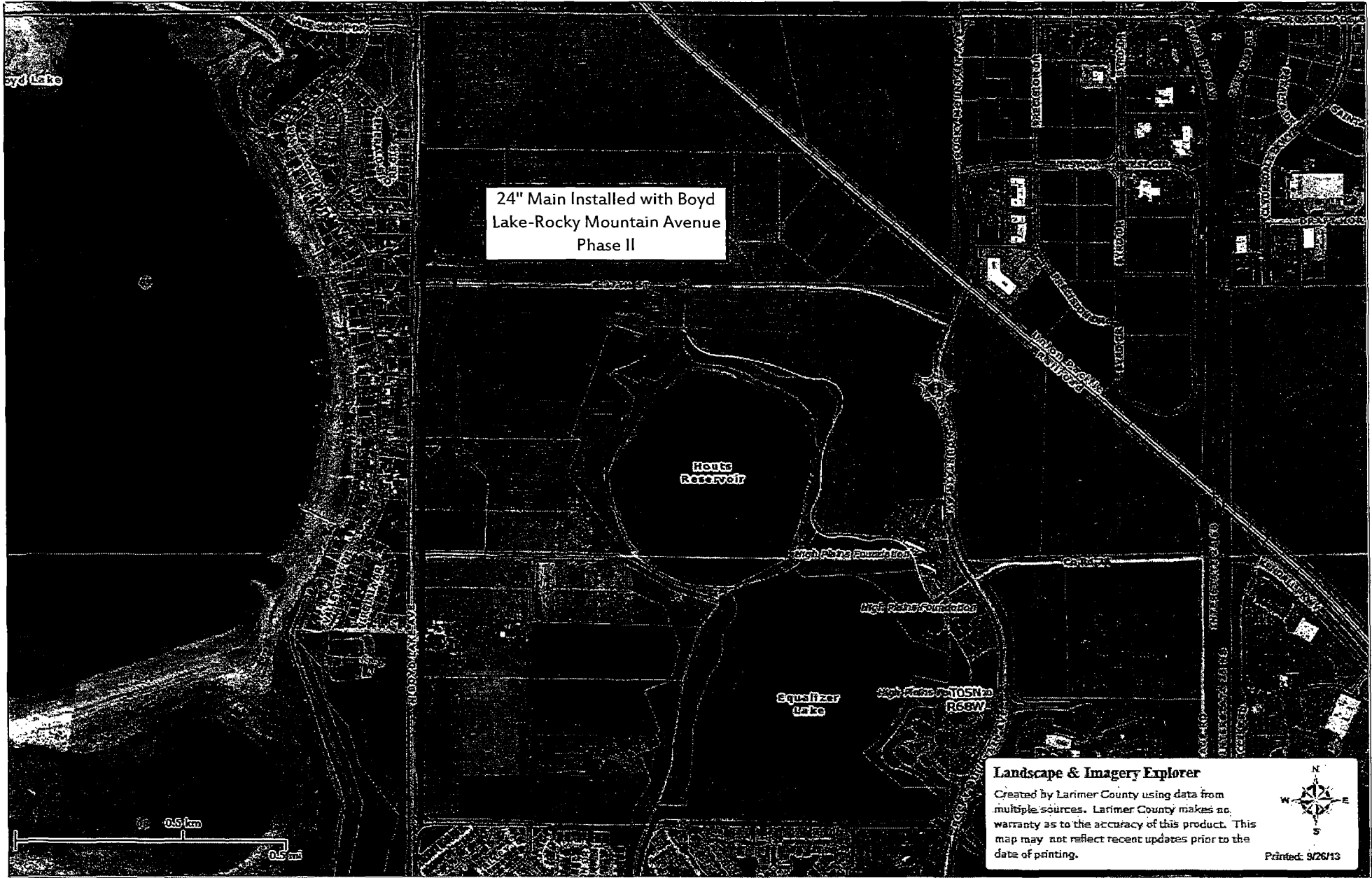
DATE: 08/14/15
SCALE: AS SHOWN
BY: [Signature]

MILLENNIUM EAST FIRST SUBDIVISION
CITY OF LOVELAND

Sheet
6
8
Sheets

EXHIBIT B

Depiction of Boyd Lake Waterline



24" Main Installed with Boyd Lake-Rocky Mountain Avenue Phase II

Houts Reservoir

Equalizer Lake

High Rate Foundation R68W

Landscape & Imagery Explorer

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Printed: 9/26/13






16" Main Installed with Boyd Lake-Rocky Mountain Avenue Phase I



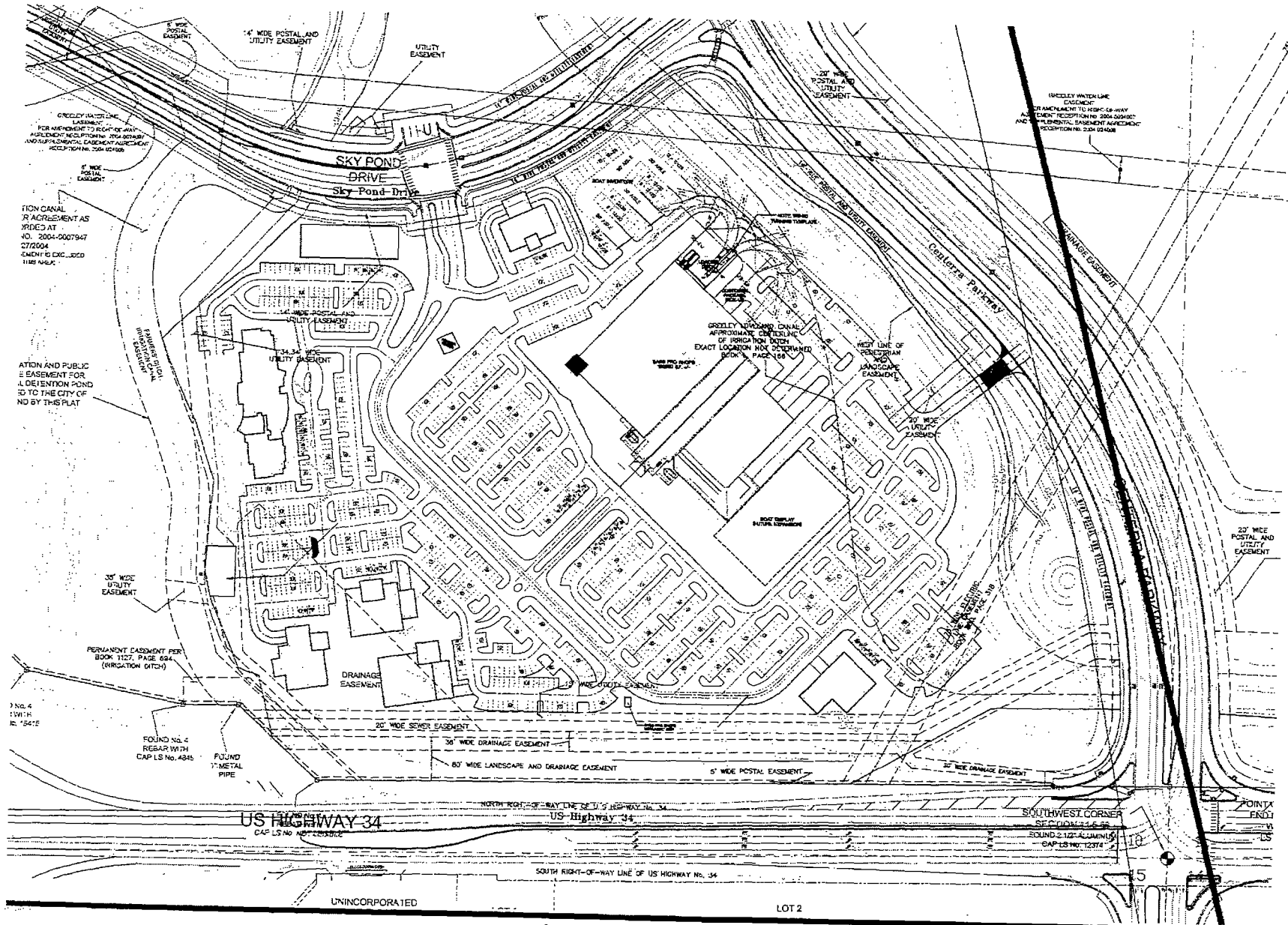
Landscape & Imagery Explorer
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Printed: 9/26/13

EXHIBIT C

Depiction of Parcel 505 Parking Improvements



Shops at Centerra - Parcel 505

